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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 776

ROBERT LEWIS BANZER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in a jury trial in the United States District Court for the District of Oregon on all six counts of an indictment, charging the unlawful interstate transportation of counterfeit checks with knowledge that they were counterfeit, in violation of 18 U.S.C. 2314 (R. 1-3, 6-6A). On March 9, 1966, he was given concurrent sentences of imprisonment for five years on each of the six counts, to be eligible for parole at such time as the Board of Parole might

determine (R. 7). The conviction was affirmed on October 18, 1966.

At the start of the trial, the court ruled (Tr. 1):[1] "There is a pending motion before the Court to the counts of the indictment in connection with a number of clerical errors. The motion is allowed, and exception is allowed to the defendant on the order." The amendments permitted were (1) changing the date of the check in Count I from November 24, 1964, to December 4, 1964; and (2) changing the amounts of the checks in Counts I, III, and V from $98.27, $98.48 and $98.40 to $98.23, $98.46 and $98.48 respectively.

These amendments do not warrant reversal of petitioner's conviction on the ground that the court improperly allowed amendment of the indictment without resubmission to the grand jury.[2] This Court stated in *Russell* v. *United States*, 369 U.S. 749, 770,

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[1] "Tr." refers to the transcript of the trial testimony.

[2] Petitioner does not challenge the sufficiency of the evidence. Petitioner requested Stevenson and Hildebrand to assist him in setting up a counterfeit check-printing and cashing operation in Portland, Oregon (Tr. 4, 9, 59-60). At petitioner's request, Tolle started an "advertising agency" and obtained a printing press (Tr. 84-85). Petitioner used the press to print a number of counterfeit blank checks of the Safeco Lifeco Insurance Company (Tr. 11-12, 60-61). Petitioner's wife typed in fictitious dates, payees and amounts (Tr. 12-13; Gov. Exs. 2-7). Stevenson and Hildebrand, together with a girl named Caroline Young, cashed the checks in Seattle, using as identification counterfeit Washington drivers' licenses which had also been printed by petitioner (Tr. 12, 25-28, 43, 48-49, 58, 65). Upon returning to Portland, Stevenson and Hildebrand turned over a portion of the proceeds to petitioner (Tr. 65-67, 80).

that "* * * an indictment may not be amended except by resubmission to the grand jury, unless the change is merely a matter of form." The amendments in question here did not illegally broaden the scope of the indictment as was the situation in *Stirone* v. *United States*, 361 U.S. 212. The charges against petitioner remained the same and he was not misled as to the nature of those charges. The change of date on one check and the trivial changes in the amounts of three other checks were not of substance and they did not vitiate the indictment. *United States* v. *Denny*, 165 F. 2d 668 (C.A. 7), certiorari denied, 333 U.S. 844; *Dye* v. *Sacks*, 279 F. 2d 834, 837 (C.A. 6). In any event, since the amendments applied only to Counts I, III, and V, and the sentences were concurrent, petitioner's sentence can be upheld on any of the other three unchallenged counts. *United States* v. *Romano*, 382 U.S. 136, 138; *Lawn* v. *United States*, 355 U.S. 339, 359; *Hirabayashi* v. *United States*, 320 U.S. 81, 85.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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